

JERRY LEE GATER, )  
)  
Plaintiff, )  
)  
v. ) No. 1:15CV163 RLW  
)  
CAPE GIRARDEAU COUNTY JAIL, et al., )  
)  
Defendants. )

This matter is before the Court upon the motion of plaintiff Jerry Lee Gater, an inmate at Cape Girardeau County Jail, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will assess an initial partial filing fee of \$1.00. *See* 28 U.S.C. § 1915(b)(1). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these

monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. *Id.*

Although plaintiff has submitted a resident account statement from the Cape Girardeau County Jail, the transaction descriptions in the account statement make it difficult to discern the monthly deposits and balance transactions for the six month time periods. As a result, the Court will require plaintiff to pay an initial partial filing fee of \$1.00. *See Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (when a prisoner is unable to provide the Court with a certified copy of his prison account statement, the Court should assess an amount “that is reasonable, based on whatever information the court has about the prisoner's finances.”).

### **28 U.S.C. § 1915(e)**

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. An action is frivolous if it “lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 328 (1989); *Denton v. Hernandez*, 504 U.S. 25, 31 (1992). An action is malicious if it is undertaken for the purpose of harassing the named defendants and not for the purpose of vindicating a cognizable right. *Spencer v. Rhodes*, 656 F. Supp. 458, 461-63 (E.D.N.C. 1987), *aff'd* 826 F.2d 1059 (4th Cir. 1987). A complaint fails to state a claim if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

### **The Complaint**

Plaintiff, an inmate at Cape Girardeau County Jail, brings this action pursuant to 42 U.S.C. § 1983 alleging violations of his civil rights. Named as defendants are the Cape Girardeau County Jail and the Federal Magistrate Judge Abbie Crites-Leoni.

Plaintiff complains that Judge Crites-Leoni has “denied him bond” and has kept him “locked up” in Cape Girardeau County Jail awaiting trial on federal charges in this Court. He complains that Judge Crites-Leoni has failed to award him access to a “proper” legal law library, and he believes that because he is representing himself pro se in his criminal action, this deprives him of his constitutional rights. Plaintiff requests that this Court transfer him to a facility where he can access a computer with legal materials. He also requests monetary damages in excess of \$250,000.

### **Discussion**

Plaintiff’s complaint is legally frivolous as to Judge Crites-Leoni because she is “entitled to absolute immunity for all judicial actions that are not ‘taken in a complete absence of all jurisdiction.’” *Penn v. United States*, 335 F.3d 786, 789 (8th Cir. 2003) (quoting *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991)).

Additionally, plaintiff’s claim against the Jail is legally frivolous because the Jail is not a suable entity. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (8th Cir. 1992) (departments or subdivisions of local government are “not juridical entities suable as such.”).

In light of the aforementioned, plaintiff’s complaint will be dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

**IT IS FURTHER ORDERED** that the plaintiff shall pay an initial filing fee of \$1.00 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his

prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(B).

An Order of Dismissal will accompany this Memorandum and Order.

Dated this 13<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE